

REMARKS/ARGUMENTS

Claims 1-9 and 11-22 are currently pending.

Claims 1-9 and 11-22 are rejected.

Claims 3 and 4 have been canceled, without prejudice.

Claims 1, 5, 6, 11 and 22 have been amended. Support for these amendments can be found throughout the specification and drawings, as originally filed.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 1-9 and 11-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,544,540 to Holman in view of U.S. Patent No. 3,135,213 to Smith.

The Applicants respectfully traverse the 35 U.S.C. §103(a) rejection of claims 1-9 and 11-22. Claims 3 and 4 have been canceled, without prejudice, and have been substantially incorporated into independent claim 1.

The standard for obviousness is that there must be some suggestion, either in the reference or in the relevant art, of how to modify what is disclosed to arrive at the claimed invention. In addition, "[s]omething in the prior art as a whole must suggest the desirability and, thus, the obviousness, of making" the modification to the art suggested by the Examiner. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 U.S.P.Q.2d (BNA) 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). Although the Examiner may suggest the teachings of a primary reference could be modified to arrive at the claimed subject matter, the modification is not obvious unless the prior art also suggests the desirability of such modification. *In re Laskowski*, 871 F.2d 115, 117,

10 U.S.P.Q.2d (BNA) 1397, 1398 (Fed. Cir.1989). There must be a teaching in the prior art for the proposed combination or modification to be proper. *In re Newell*, 891 F.2d 899, 13 U.S.P.Q.2d (BNA) 1248 (Fed. Cir. 1989). If the prior art fails to provide this necessary teaching, suggestion, or incentive supporting the Examiner's suggested modification, the rejection based upon this suggested modification is error and must be reversed. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d (BNA) 1566 (Fed. Cir. 1990).

The law is also clear that a claim in dependent form shall be construed to incorporate all the limitations of the claim to which it refers. 35 U.S.C. § 112 ¶ 4.

In the interests of expediting the prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended claim 1 to recite, among other things, a pump for pumping fluid in a vehicle having at least one fluid reservoir, said pump comprising: (1) a pump housing having a pump element; (2) an electric motor operatively attached to and disposed within said pump housing; (3) a pumping chamber, the pump element operatively coupled to said electric motor, said pumping chamber including an intake port for receiving fluid from said fluid reservoir and an exit port for pumping fluid from said fluid reservoir, wherein said intake port and said exit port are oriented in a substantially coplanar relationship; (4) an inlet or outlet porting plate member adjacent to said pump, wherein said inlet or outlet porting plate member includes at least one area defining an inlet or outlet passage, wherein said inlet or outlet passage is in fluid communication with said intake port or said exit port of said pumping chamber; and (5) at least one other intake port or exit port derived from porting configured in a surface adjacent to said inlet or outlet porting plate member and not formed integrally with said inlet or outlet porting plate member, wherein said at

least one other intake port or exit port is in fluid communication with said inlet or outlet passage of said inlet or outlet porting plate member, wherein said pump is submerged within said fluid reservoir of said vehicle, wherein said fluid reservoir is selected from the group consisting of a transmission, transfer case, engine reservoir, and combinations thereof.

In the interests of expediting the prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended claim 22 to recite, among other things, a pump for pumping of fluid from at least one fluid reservoir of a vehicle, said pump comprising: (1) a submerged pump housing; (2) a motor situated in said pump housing and exposed to the fluid in the fluid_reservoir, said motor including a self centering armature therethrough; (3) a pump chamber at the base of said pump housing; (4) a pump element operably attached to said armature in said chamber for pumping fluid; (5) an inlet or outlet porting plate member adjacent to the pump, wherein said inlet or outlet porting plate member includes at least one area defining an inlet or outlet passage, wherein said inlet or outlet passage is in fluid communication with said pump chamber; and (6) a surface adjacent to and not formed integrally with said inlet or outlet porting plate member and operatively associated with said inlet or outlet passage of said inlet or outlet porting plate member and said pump chamber for providing an inlet and an outlet of fluid to the pump chamber contained in the pump housing, wherein said inlet and said outlet are oriented in a substantially coplanar relationship, and said surface including at least one oil fill passage connecting said fluid reservoir to said pump chamber for intake and pumping of said oil from said fluid reservoir, wherein said pump is submerged within said fluid reservoir of said

vehicle, wherein said fluid reservoir is selected from the group consisting of a transmission, transfer case, oil reservoir, and combinations thereof.

Neither to Holman and/or Smith et al., either alone or in combination therewith, suggests such structures.

Specifically, neither Holman and/or Smith et al., either alone or in combination therewith, suggest, among other things, an inlet or outlet porting plate member adjacent to the pump, wherein the inlet or outlet porting plate member includes at least one area defining an inlet or outlet passage, wherein the inlet or outlet passage is in fluid communication with the intake port or said exit port of the pumping chamber, or alternatively, an inlet or outlet porting plate member adjacent to the pump, wherein the inlet or outlet porting plate member includes at least one area defining an inlet or outlet passage, wherein the inlet or outlet passage is in fluid communication with the pump chamber. Accordingly, one of ordinary skill in the art would not look to either Holman and/or Smith et al., either alone or in combination therewith, for guidance on constructing a pump, as presently claimed.

Therefore, the Applicants submit that neither Holman and/or Smith et al., either alone or in combination therewith, renders claims 1 and 22 obvious. Furthermore, claims 2, 5-9 and 11-21, which depend from and further define claim 1, are likewise allowable.

Accordingly, the Applicants submit that the 35 U.S.C. 103(a) rejection of claims 1, 2, 5-9 and 11-22 has been overcome.

CONCLUSION

In view of the foregoing, the Applicant respectfully requests reconsideration and reexamination of the Application. The Applicant respectfully submits that each item raised by the Examiner in the Office Action of February 18, 2005 has been successfully traversed, overcome or rendered moot by this response. The Applicant respectfully submits that each of the claims in this Application is in condition for allowance and such allowance is earnestly solicited.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 364-4300 if any unresolved matters remain.

Any needed extension of time is hereby requested with the filing of this document.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 501612. A duplicate copy of this letter is enclosed herewith.

Respectfully submitted,

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